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10/593,881	04/13/2007	Akio Nakagawa	50478-4100	5792
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SNELL & WILMER LLP (OC)			PINKNEY, DAWAYNE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/593,881	NAKAGAWA, AKIO
	Examiner	Art Unit
	DAWAYNE A. PINKNEY	2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 April 2008.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 17 is/are allowed.
 6) Claim(s) 1-14 is/are rejected.
 7) Claim(s) 15 and 16 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kandel et al. (US 2004/0105075).

Regarding **claim 1**, Kandel discloses, a pupillary reflex checking apparatus comprising:

a reflecting unit operable to form an image of a pupil of a subject's eye on an optical reflecting surface that is disposed in a plane that intersects with a visual axis of the subject (Paragraph 0038, lines 7-13, and 18A and 18B of Fig. 1A); and

a stimulus applying unit operable to apply a stimulus to induce a pupillary reflex in the subject (Paragraph 0038, lines 4-13, Paragraph 0039, lines 1-8, 26A, 26B and 41A, 41B of Figs. 1A, and 1B).

Furthermore, Kandel discloses the claimed invention except for the reflecting unit is disposed in a plane that is substantially orthogonal to a visual axis of the subject. It would have been obvious to one of ordinary skill in the art at the time the invention was made to dispose the reflecting unit in a plane that is substantially orthogonal to a visual axis of the subject, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding **claim 2**, Kandel discloses, the pupillary reflex checking apparatus of claim 1, wherein the stimulus applying unit applies a light stimulus to the subject's eye as the stimulus to induce the pupillary reflex (Paragraph 0038, lines 1-20).

Regarding **claim 3**, Kandel discloses, the pupillary reflex checking apparatus of claim 2, wherein the light stimulus is pulsed light (Paragraph 0038, lines 1-12, and Paragraph 0040, lines 1-5).

Regarding **claims 4 and 10**, although Kandel does not explicitly disclose the period of the pulsed light is set to be at least as long as a period required for mydriasis and miosis, it would have been obvious to one of ordinary skill in the art at the time the invention was made to set the period of the pulsed light to be at least as long as a period required for mydriasis and miosis because this would provide a pupillary reflex checking apparatus which effectively and accurately diagnoses eye diseases of the examinee being tested by the pupillary reflex checking apparatus.

Regarding **claim 5**, Kandel discloses, the pupillary reflex checking apparatus of Claim 3 , further comprising an illumination unit operable to irradiate the subject's eye with light that is less intense than the pulsed light irradiated by the stimulus applying unit (Paragraph 0037, lines 1-9, and 40A, 40B of Figs. 1A and 1B).

Regarding **claim 6**, Kandel discloses, the pupillary reflex checking apparatus of claim 5, wherein the reflecting unit is composed of a half-mirror that has, as the optical reflecting surface, a main surface which a is mirror surface (18A and 18B of Fig. 1A).

Regarding **claim 7**, Kandel discloses, a fatigue recovery facilitating apparatus for facilitating recovery from fatigue of a subject by repetition of mydriasis and miosis, the fatigue recovery facilitating apparatus including

a pupillary reflex checking unit for a subject to check his or her own pupillary reflex (Figs. 1A and 1B), wherein the pupillary reflex checking unit includes:

a reflecting subunit operable to form an image of a pupil of a subject's eye on an optical reflecting surface that is disposed in a plane that intersects with a visual axis of the subject (Paragraph 0038, lines 7-13, and 18A, 18B of Fig. 1A); and

a stimulus applying subunit operable to apply a stimulus to induce a pupillary reflex in the subject (Paragraph 0038, lines 4-13, Paragraph 0039, lines 1-8, 26A, 26B and 41A, 41B of Figs. 1A, and 1B).

Furthermore, Kandel discloses the claimed invention except for the reflecting unit is disposed in a plane that is substantially orthogonal to a visual axis of the subject. It would have been obvious to one of ordinary skill in the art at the time the invention was made to dispose the reflecting unit in a plane that is substantially orthogonal to a visual axis of the subject, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding **claim 8**, Kandel discloses, the fatigue recovery facilitating apparatus of claim 7, wherein the stimulus applying subunit of the pupillary reflex checking unit applies a light stimulus to the subject's eye as the stimulus to induce the pupillary reflex (Paragraph 0038, lines 1-20).

Regarding **claim 9**, Kandel discloses, the fatigue recovery facilitating apparatus of claim 8, wherein the light stimulus is pulsed light (Paragraph 0038, lines 1-12, and Paragraph 0040, lines 1-5).

Regarding **claim 11**, Kandel discloses, the fatigue recovery facilitating apparatus of Claim 9, wherein the pupillary reflex checking unit further includes an illumination unit operable to irradiate the subject's eye with light that is less intense than the pulsed light irradiated by the stimulus applying unit (Paragraph 0037, lines 1-9, and 40A, 40B of Figs. 1A and 1B).

Regarding **claim 12**, Kandel discloses, the fatigue recovery facilitating apparatus of claim 9, wherein the reflecting subunit of the pupillary reflex checking unit is composed of a half-mirror that has, as the optical reflecting surface, a main surface which is mirror surface (18A and 18B of Fig. 1A).

3. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kandel et al. (US 2004/0105075) as applied to claim 12 above, in view of Fukushima et al. (US 6, 669, 651).

Kandel remains as applied to **claim 12 above**.

Furthermore, Kandel discloses, an ocular lens is disposed in proximity to the eyeball of the subject (16A and 16B of Fig. 1A).

Kandel does not teach an image display subunit is provided on an extension of an imaginary line that connects an eyeball of the subject and the reflecting subunit.

Fukushima teaches, that in a fatigue recovery facilitating apparatus having a pupillary reflex checking unit with a reflecting subunit and a stimulus applying subunit

that it would be desirable to include an image display subunit is provided on an extension of an imaginary line that connects an eyeball of the subject and the reflecting subunit (Column 8, lines 6-8, and b of Figs. 1 and 10) for the purpose of effectively testing and evaluating an examinee for disorders (Column 1, lines 10-14).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the image display subunit as taught by the fatigue recovery facilitating apparatus of Fukushima in the fatigue recovery facilitating apparatus of Kandel since Fukushima teaches it is known to use this feature in a fatigue recovery facilitating apparatus for the purpose of effectively testing and evaluating an examinee for disorders (Column 1, lines 10-14).

Regarding **claim 14**, Kandel and Fukushima disclose the claimed invention except for an optical distance between the ocular lens and the reflecting subunit is substantially 50% of an optical distance between the ocular lens and the image display subunit. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the optical distance between the ocular lens and the reflecting subunit is substantially 50% of an optical distance between the ocular lens and the image display subunit, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Response to Arguments

4. Applicant's arguments filed 04/28/2008 have been fully considered but they are not persuasive.

5. In response to applicant's argument that the device of the applicant is trying to relieve eye fatigue and eye strain, and the device is not a medical diagnostic instrument, nor is it intended to perform that function, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

6. In response to applicant's arguments that Kandel nor Fukushima does not teach or disclose an image display subunit including a light source configured to provide a display image on a visual axis of the user. The Examiner points out that Fukushima discloses an image display subunit is provided on an extension of an imaginary line that connects an eyeball of the subject and the reflecting subunit (Column 8, lines 6-8, and b of Figs. 1 and 10).

7. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the image display subunit provide a visual image which can be further changed or altered by the user through the user controls on the exterior of the housing body, thus the image display unit can be moved under the control of the user. Also, a reflecting subunit configured to form a visible image of a pupil of the user's eye on the visual axis, this occurs when the display subunit light source is not activated to provide the display image) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

8. In response to applicant's arguments, the recitation "A fatigue recovery facilitating apparatus for facilitating recovery from fatigue of a subject by repetition of mydriasis and miosis" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

9. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the present invention provides a user friendly aid to relieve stress and fatigue that are a byproduct of the modern office environment with computer screens, and the optical reflecting surface to be a plane that is substantially orthogonal to the visual axis of the subject, thereby facilitating self monitoring and encouraging the user to use our device for an effective time period to relieve eye strain) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Allowable Subject Matter

10. Claims 15-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 17 is allowed.

12. The following is a statement of reasons for the indication of allowable subject matter: none of the prior art either alone or in combination disclose or teach of the claimed combination of limitations to warrant a rejection under 35 USC 102 or 103.

Specifically, in reference to dependent claim 15, none of the prior art either alone or in combination disclose or teach of the claimed fatigue recovery facilitating apparatus specifically including, as the distinguishing feature(s) in combination with the other limitations the claimed “image display subunit includes a film and a light source that irradiates the subject’s eye with pulsed light through the film.”

13. Specifically, in reference to dependent claim 16, none of the prior art either alone or in combination disclose or teach of the claimed fatigue recovery facilitating apparatus specifically including, as the distinguishing feature(s) in combination with the other limitations the claimed “image display subunit and the lens are one of a plurality of image display subunits and a plurality of lenses, the image display subunits and the lenses being provided with respect to a left eye and a right eye of the subject.”

14. Specifically, in reference to independent claim 17, none of the prior art either alone or in combination disclose or teach of the claimed fatigue recovery facilitating apparatus specifically including, as the distinguishing feature(s) in combination with the other limitations the claimed “stimulus applying subunit configured to apply a light

stimulus to induce a pupillary reflex in the user wherein the user can activate user switch controls to provide the display image for focusing the user's eyes on the display image and for activating the stimulus applying subunit to induce mydriasis and miosis while enabling the user to observe periodically the effect of the stimulus directly on the image of the user's pupil on the same visual axis."

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAWAYNE A. PINKNEY whose telephone number is (571)270-1305. The examiner can normally be reached on Monday-Thurs. 8 a.m.- 4:30 p.m..

Art Unit: 2873

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott J. Sugarman/
Primary Examiner, Art Unit 2873

/DaWayne A Pinkney/
Examiner, Art Unit 2873
07/18/2008